

REMARKS

Claims 1 through 23 are pending in this Application, of which claims 13 through 20 stand withdrawn from consideration pursuant to the provisions of 37 C.F.R. § 1.142(b). Claims 6 through 12 have been allowed. Accordingly, the only remaining issue pivots about the patentability of claims 1 through 5 and 21 through 23, claim 1 being the only independent claim.

Telephonic Interview of November 3, 2005

Applicants express appreciation for Examiner Nguyen's professionalism and courtesy in conducting a telephonic interview on November 3, 2005. During that telephonic interview the Examiner's attention was invited to the fact that in the structure disclosed by Huang et al., e.g., Fig. 1, there is **no interface** between the identified first barrier layer 40 and the identified single first dielectric layer 20. Rather, a separate **layer** 30 exists. The Examiner agreed and suggested that a response be submitted memorializing this admitted difference between the claimed invention and the applied prior art. It is Applicants' understanding that the imposed rejections would be withdrawn. However, for completeness the imposed rejections are treated below.

Claims 1, 2, 5, 21 and 22 were rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by Huang et al.

This rejection is traversed. Specifically, the factual determination of lack of novelty under 35 U.S.C. § 102 requires the **identical** disclosure in a single reference of each element of a claimed invention such that the **identically claimed invention** is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003); *Crown Operations International Ltd. v.*

Solutia Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). There is a fundamental difference between the claimed method and the methodology of Huang et al. that scotches the factual determination that Huang et al. disclose a method identically corresponding to that claimed.

Specifically, and as appreciated by the Examiner, in accordance with the method defined in independent claim 1, the first barrier layer is deposited on the single first dielectric layer forming an **interface** therebetween. **No such interface** is formed between the first barrier layer 40 and the single first dielectric layer 20 in the methodology of Huang et al. because an **intervening layer 30 is formed.**

The above argued difference in manipulative steps between the claimed method and the methodology of Huang et al. undermines the factual determination that Huang et al. disclose a method identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claims 1, 2, 5, 21 and 22 under 35 U.S.C. § 102 for lack of novelty as evidenced by Huang et al. is not factually or legally viable and, hence, solicit withdrawal thereof.

Claims 2 through 4 and 23 were rejected under 35 U.S.C. § 103 for obviousness predicated upon Huang et al. in view of Hasegawa et al. and Wolf et al.

This rejection is traversed. Specifically, claims 2 through 4 and 23 depend from independent claim 1. Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as

evidenced by Huang et al. The secondary references to Hasegawa et al. and Wolf et al. do not cure the previously argued deficiencies of Huang et al. Accordingly, even if the applied references are combined as suggested by the Examiner, and Applicants do not agree that the requisite fact-based motivation has been established, the claimed invention would not result.

Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).

Applicants, therefore, submit that the imposed rejection of claims 2 through 4 and 23 under 35 U.S.C. § 103 for obviousness predicated upon Huang et al. in view of Hasegawa et al. and Wolf et al. is not factually or legally viable and, hence, solicit withdrawal thereof.

Applicants acknowledge, with appreciation, the Examiner's allowance of claims 6 through 12. Based upon the arguments submitted *supra*, it should be apparent that the imposed rejections have been overcome and that all active claims are in condition for immediate allowance. Favorable consideration is, therefore, solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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